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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/588,999	08/10/2006	Sapir Tal	27624U	4544
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THE NATH LAW GROUP				
112 South West Street				
Alexandria, VA 22314				
EXAMINER				
PIERCE, WILLIAM M				
ART UNIT		PAPER NUMBER		
3711				
MAIL DATE		DELIVERY MODE		
03/23/2010		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/588,999

Applicant(s)

TAL, SAPIR

Examiner

William M. Pierce

Art Unit

3711

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 December 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 and 15-36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 and 15-36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

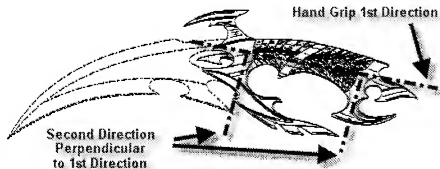
Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

Claims 1 and 3-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Rae D478,957 as set forth in the previous office action.



Applicant argues that the examiner does "not demonstrate that each and every feature...is disclosed." Applicant is directed all the way back to the first office action of 4/30/2008 where each feature was clearly diagramed. Additionally, in response to applicant's remarks in the previous office action, a discussion of how Rae is interpreted to form a second hand grip was set forth. As such this argument fails.

Applicant subsequently offers his interpretation of Rae arguing the direction between the 1st and 3rd spikes is "significantly oblique". However, the use of a broader term "generally perpendicular" does not necessarily preclude an oblique angle. Further there exist no limitations to constrain one's interpretation of the first direction or the direction of the second hand grip between the 1st and 3rd spikes. Here, where applicant has unsuccessfully shown where the examiner erred or his interpretation is unreasonable, the grounds for rejection remains.

Applicant further argues that the "hilt" of Rae could not be gripped due to protrusions. However, this is speculation and there is no clear evidence to support such a statement. Even if care must be taken by a user when gripping the hilt of Rae, it is still capable of being considered a grip depending upon its intended use. Applicant's position seem similar to arguing that the blade of a knife could not be considered a handle because the sharp edge would cause injury. However, such logic fails since it is well known that the blade of a knife can function as a grip when throwing. Here the term grip imparts no structure to the claim to distinguish over the art and is interpreted as a recitation of intended use. Hence, where the 1st and 3rd spikes of Rae are capable of being gripped, they meet the limitations of the claim.

Claims 1, 2, 5, 6, 7, 11, 12, 16, 17 and 32 are rejected under 35 U.S.C. 102(b) as being anticipated by Townsend 5,546,832 as set forth in the previous office action;

"Townsend is applied as an alternate rejection to show how the combination of elements and their structural relationship being recited broadly reads on many apparatus.

As to claims 1, 2 and 5-7, Townsend shows a first hand grip portion 48 with finger ridges, a first spike 14 at a first end and second spike 46 at a second end in a same direction, and a third spike 16 opposite the first spike. Here the term spike is most broadly construed to be a protrusion. Applicant's specification offers no specific definition and the plain meaning of the term as "something resembling a very large nail" fail to impart any special meaning to the term such that it should be afforded a narrower interpretation. Element 12 is considered a bulging portion as called for by claim 11 and 36 considered fifth spike as called for by claim 12. The apparatus of Townsend is capable of having a key ring attachable thereto as called for by claim 16 or used as a bag carrier as called for by claim 32."

The presumption behind Applicant's remarks that the "neck portion of the handle 24...cannot be considered as a 'hand grip'" is not persuasive. First a hammer is

gripped in many ways. Personally the examiner has often used a "neck" of a hammer as a grip portion when carrying the hammer or using two hands to extract a nail.

Further, the claims must distinguish over the prior art in terms of structure as oppose to function. Most broadly it is clear that a hammer is capable of being gripped along any point of its structure.

Applicant goes on to argue that the hammer head of Townsend cannot be considered a first spike. However, this does not take into consideration the whole disclosure. Townsend is clear that any variety of hammer head can be used such a "pointed hammer heads" (col. 4, ln. 24). As such the hammer head of Townsend being considered being a spike is considered met and applicant's remarks are unpersuasive.

Claims 2 and 15-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rae in view of matters considered old and well known to striking weapons as set forth in the previous office action.

Claims 3, 15, 17-31 and 33-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Townsend in view of matters considered old and well known to striking weapons as set forth in the previous office action;

As to claim 3, curving a hand grip portion of a tool like that shown by Townsend is considered old and well known in order to make it easier and more comfortable to grip. As to claim 15 applying a coating such as paint to an article such as that shown by Townsend would have been obvious in order to decorated it and protect it from the elements. As to claims 17-26, combining diverse article such as tools, lights and dispersant mechanisms has been held obvious where the two devices perform their intended functions and no synergistic benefit is realized. As such the combination of the apparatus of Townsend with a diverse article such as that being claimed would have been obvious in order to make it more convenient that carrying two separate tools. Wrist straps as called for by claim 27 are old and well known to hand held implements. As to claims 28-30, the apparatus of Townsend is capable of serving as a handle for an elongated object. As to claim 31 and 33, protective covers or cases and belt clip for

tools are considered old and well known. As to claims 34-36, providing instructions with a device in how to use it is considered old and well known. Further, it has been held that the addition of instructions for how to use a device cannot impart patentability. See *In re Ngai* (5/13/04)(*Michel, Garjarsa, Linn*)(*per curiam*)

Conclusion

Applicant's arguments filed 12/23/09 have been fully considered but they are not persuasive as set forth above in the grounds for rejection.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William Pierce whose telephone number is 571-272-4414 and E-mail address is bill.pierce@USPTO.gov. The examiner can normally be reached on Monday and Friday 9:00 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, communication via email at the above address may be found more effective. Where current PTO internet usage policy does not permit an examiner to initiate communication via email,

such are at the discretion of the applicant. However, without a written authorization by applicant in place, the USPTO will not respond via Internet e-mail to any Internet correspondence which contains information subject to the confidentiality requirement as set forth in 35 U.S.C. 122. A paper copy of such correspondence will be placed in the appropriate patent application. The following is a sample authorization form which may be used by applicant:

"Recognizing that Internet communications are not secure, I hereby authorize the USPTO to communicate with me by responding to this inquiry by electronic mail. I understand that a copy of these communications will be made of record in the application file."

For further assistance examiner's supervisor, Gene Kim can be reached on 571-272-4463. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/William M Pierce/

Primary Examiner, Art Unit 3711